



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1998

Ms. Marva M. Gay  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-189

OR98-0768

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114450.

Harris County (the "county") received a request for information concerning "traffic flow or similar studies performed on Lakes of Bridgewater Drive in the 3500 block" area. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

To show that section 552.103 is applicable, the county must demonstrate that 1) litigation is pending or reasonably anticipated and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the county must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

You have submitted a notice of claim letter which you state complies with the notice requirements of the TTCA. We conclude that litigation is reasonably anticipated, and that the documents submitted by the county are related to the reasonably anticipated litigation for purposes of section 552.103. Thus, you may withhold the requested information from public disclosure under section 552.103.

We note, however, that the Interlocal Agreement, which we have marked, may be a public record. The agreement involved public funding and was "executed on behalf of the County by the County Judge of Harris County, Texas, pursuant to an order of the Commissioners Court of Harris County authorizing such execution." Thus, it appears that the action undertaken in the agreement was adopted by the Commissioners Court in an open meeting. Such information is public and must be released. *See* Open Records Decision No. 551 (1990).

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 114450

Enclosures: Marked documents

cc: Mr. Robert P. Gaddis  
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(w/o enclosures)